Kathryn A. Bernert, State Bar No. 127418
Nykia J. Wilson, State Bar No. 224135
LUCE, FORWARD, HAMILTON & SCRIPPS LLP
Del Mar Gateway, 11988 El Camino Real, Suite 200
San Diego, California 92130-2594
Telephone No.: 858.720.6300
Fax No.: 858.720.6306
E-Mail: kbernert@luce.com

Attorneys for Defendant HSBC AUTO FINANCE INC.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ANDREW WILLIAMS, RODERICK MURRIEL, ALFRED LARRAGA, CHAD ALEXANDER and CYNTHIA JIMENEZ, Plaintiffs, v. HSBC - AUTO FINANCE and DOES 1-20, Inclusive, Defendant.	Case No. 3:08-cv-01391-BEN-RBB **NOTICE OF ERRATA TO NOTICE OF REMOVAL OF CIVIL ACTION**

TO THE COURT, TO PLAINTIFFS AND TO THEIR ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that Defendant HSBC Auto Finance Inc.'s ("HSBC") Notice of Removal of Civil Action, filed on July 31, 2008, inadvertently failed to include a true and correct copy of HSBC's Answer to Plaintiffs' First Amended Complaint, which was timely filed on July 30, 2008 (the "Answer"). A true and correct copy of the Answer is attached hereto as Exhibit "C" to the Notice

///

///

///

///

///

of Removal of Civil Action. HSBC regrets any inconvenience due to this omission.

DATED: September 4, 2008

LUCE, FORWARD, HAMILTON & SCRIPPS LLP

By: ______________________

Kathryn A. Bernert
Nykia J. Wilson
Attorneys for Defendant HSBC AUTO FINANCE INC.

101116320.1

EXHIBIT C

Kathryn A. Bernert, State Bar No. 127418
Nykia J. Wilson, State Bar No. 224135
LUCE, FORWARD, HAMILTON & SCRIPPS LLP
Del Mar Gateway, 11988 El Camino Real, Suite 200
San Diego, California 92130-2594
Telephone No.: 858.720.6300
Fax No.: 858.720.6306
E-Mail: kbernert@luce.com

Attorneys for Defendant HSBC AUTO FINANCE INC.

FILED
Clerk of the Superior Court
JUL 30 2008
By: K SANDOVAL, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

ANDREW WILLIAMS, RODERICK MURRIEL, ALFRED LARRAGA, CHAD ALEXANDER and CYNTHIA JIMENEZ, Plaintiffs, v. HSBC - AUTO FINANCE and DOES 1-20, Inclusive, Defendants.	Case No. 37-2007-00081369-CU-CR-CTL **DEFENDANT HSBC AUTO FINANCE INC.'S ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT** Hon. Ronald S. Prager Dept. C-71 Complaint Filed: November 7, 2007 Trial Date: January 23, 2009

I.

GENERAL

Pursuant to California Code of Civil Procedure section 431.30, Defendant HSBC AUTO FINANCE INC. ("Defendant") denies generally and specifically each, every, and all of the allegations of the First Amended Complaint, and the whole thereof. Defendant further denies that Plaintiffs have sustained, or will sustain, any injury, damage, or loss by reason of any act, omission, breach, or negligence, or any other conduct or the absence thereof, on the part of Defendant, or any agent, attorney, servant, or employee of Defendant.

///

///

II.

AFFIRMATIVE DEFENSES TO THE FIRST AMENDED COMPLAINT AND EACH ALLEGED CAUSE OF ACTION THEREOF

As separate affirmative defenses to the First Amended Complaint, and to each purported cause of action therein, Defendant alleges:

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

The First Amended Complaint fails to state facts sufficient to constitute a cause or causes of action against Defendant.

SECOND AFFIRMATIVE DEFENSE

(Uncertainty)

The First Amended Complaint is vague, uncertain, ambiguous and unintelligible.

THIRD AFFIRMATIVE DEFENSE

(Failure to Identify Specific Statutory/Constitutional Provisions)

Some or all of the claims for damages in the First Amended Complaint are barred in that Plaintiffs have failed to identify, with the requisite degree of specificity, any statutory and/or constitutional provision which has been expressly violated by any act of Defendant.

FOURTH AFFIRMATIVE DEFENSE

(Statutes of Limitation)

Defendant is informed and believes and thereon alleges that the First Amended Complaint, and each cause of action therein, is barred by each and every applicable statute of limitations, including, but not limited to, California Code of Civil Procedure sections 338(a), 339(1), 340(a), 340(c), 343; California Business and Professions Code section 17208; California Government Code sections 12960 and 12965(a) and (b); 15 U.S.C. section 1681p; and 15 U.S.C. section 1692k(d).

///

///

///

///

FIFTH AFFIRMATIVE DEFENSE

(Failure to Commence Suit Timely)

Some or all of the claims for damages in the First Amended Complaint are barred in that Plaintiffs failed to timely file their claims after receiving notice from the Department of Fair Employment and Housing and/or the Equal Employment Opportunity Commission.

SIXTH AFFIRMATIVE DEFENSE

(Federal Preemption)

Some or all of the claims for damages arising under California state law in the First Amended Complaint are preempted and barred by the exclusive remedy provisions of the federal Fair Debt Collection Practices Act (15 U.S.C. § 1692, *et. seq.*) and the federal Fair Credit Reporting Act (15 U.S.C. § 1681 *et. seq.*).

SEVENTH AFFIRMATIVE DEFENSE

(Estoppel)

Plaintiffs are estopped by their own conduct and omissions from asserting any claims, damages or seeking other relief from Defendant.

EIGHTH AFFIRMATIVE DEFENSE

(Waiver)

Plaintiffs, by their actions and/or omissions, knowingly, voluntarily and willingly waived any rights they might otherwise have had against Defendant.

NINTH AFFIRMATIVE DEFENSE

(Laches)

Some or all of the causes of actions in the First Amended Complaint are barred by the doctrine of laches.

TENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

Plaintiffs have not been damaged. However, to the extent Plaintiffs prove otherwise, Plaintiffs have failed to take adequate steps to minimize, alter, reduce or otherwise diminish their damages, if any, with respect to the matters alleged in the First Amended Complaint, and by reason of the foregoing, Plaintiffs are barred from the recovery of damages, or damages should be dismissed based on Plaintiffs' failure to mitigate.

ELEVENTH AFFIRMATIVE DEFENSE

(Failure to Exhaust Administrative Remedies)

Some or all of the claims for damages in the First Amended Complaint are barred in that Plaintiffs failed to timely or properly exhaust their administrative remedies, including without limiting, remedies under the California Fair Employment Housing Act, Title VII of the Civil Rights Act of 1964, and/or the California Labor Code.

TWELFTH AFFIRMATIVE DEFENSE

(Exclusive Statutory Remedy)

Some or all of the claims for damages in the First Amended Complaint are barred in that Plaintiffs' exclusive remedy is statutory under the Labor Code and/or Government Code sections 12940 *et seq*., and there is no common law remedy or other statutory remedy available to Plaintiffs.

THIRTEENTH AFFIRMATIVE DEFENSE

(No Private Right of Action)

Some or all of the claims for damages in the First Amended Complaint are barred in whole or in part as there is no private right of action for a violation of Labor Code section 2856.

FOURTEENTH AFFIRMATIVE DEFENSE

(Workers' Compensation Preemption)

Some or all of the claims for damages in the First Amended Complaint are barred by the provisions of the California Labor Code sections 3200 *et seq*., the Workers' Compensation laws, which provide Plaintiffs' exclusive remedy.

FIFTEENTH AFFIRMATIVE DEFENSE

(Unclean Hands)

Defendant is informed and believes and thereon alleges that Plaintiffs, by their own conduct, acts, and/or omissions, is barred by their unclean hands and shared fault from all legal and equitable relief requested in the First Amended Complaint.

SIXTEENTH AFFIRMATIVE DEFENSE

(Comparative/Contributory Fault)

Plaintiffs are barred, in whole or in part, by their own fault from any legal or equitable relief against Defendant.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Apportionment)

Defendant is not legally responsible for any damages claimed by Plaintiffs. If, however, Defendant is found to be legally responsible, Defendant's legal responsibility is not the sole and proximate cause of any injury, and damages awarded to Plaintiffs, if any, should be apportioned according to the respective fault and legal responsibility of all parties, persons and entities, and/or the agents, servants and employees who contributed to and/or caused said incidents according to proof presented at the time of trial.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Avoidable Consequences)

Some or all of the claims for damages in Plaintiff's Complaint are barred because Plaintiffs unreasonably failed to use preventive and corrective measures available to them which would have prevented all or some of the harm Plaintiffs allege.

NINETEENTH AFFIRMATIVE DEFENSE

(No Discrimination or Retaliation)

Some or all of the claims for damages in Plaintiffs' Complaint are barred in that Defendant's actions in connection with the matter alleged were done in a non-discriminatory and non-retaliatory manner.

TWENTIETH AFFIRMATIVE DEFENSE

(Judicial Estoppel)

Some or all of the claims for damages in Plaintiffs' Complaint are barred by the doctrine of judicial estoppel because Plaintiff has previously sought and obtained long-term disability benefits or workers' compensation benefits.

///

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Valid Business Purposes)

Plaintiffs' claims are barred for the reason that the alleged conduct of Defendant was at all times undertaken in the good faith exercise of a valid business purpose.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Conduct Justified)

Some or all of the claims for damages in the First Amended Complaint are barred in that Defendant's actions in connection with the matters alleged were done in good faith and based on its legitimate economic interest and within the course and scope of its authority and were, therefore, privileged.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(No Punitive/Exemplary Damages)

Under the applicable law and the facts of this case, Plaintiffs are not entitled to punitive/exemplary damages. Moreover, punitive/exemplary damages such as those claimed by Plaintiffs are unconstitutional under the California Constitution and the United States Constitution.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Not Entitled to Attorneys' Fees)

The First Amended Complaint, and each cause of action contained therein, fails to allege any facts or any legal theory sufficient to entitle Plaintiffs to recover attorneys' fees in this action.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Lack of Causation)

None of the acts, conduct and/or omissions attributed to Defendant in the First Amended Complaint may be regarded as the actual or proximate cause of any damages Plaintiff seeks to recover.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Consent)

Plaintiffs consented to and approved all or some of the acts and omissions about which Plaintiffs now complain. Accordingly, Plaintiffs are barred from pursuing this action.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(No Standing)

The claims of Plaintiffs and the purported classes are barred by reason of lack of standing to the extent they have suffered no cognizable injury.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(No Nexus)

Plaintiffs' claims are barred in whole or in part due to Plaintiffs' failure to meet their burden of demonstrating a nexus between Defendant's alleged acts, conduct, or statements and any impact on Plaintiffs or the general public Plaintiffs purport to represent.

TWENTY-NINTH AFFIRMATIVE DEFENSE

(Abstention)

Plaintiffs' claim for relief should be denied under the equitable doctrine of abstention.

THIRTIETH AFFIRMATIVE DEFENSE

(Statute as Applied Is Unconstitutionally Vague)

Plaintiffs' claims violate Defendant's rights under the United States and California Constitutions by attempting to enforce California Business & Professions Code Section 17200 *et seq.* and the other statutes and regulations listed in the First Amended Complaint in a manner which renders the requirements of those statutes and regulations unconstitutionally vague.

THIRTY-FIRST AFFIRMATIVE DEFENSE

(Compliance with Applicable Laws)

Plaintiffs' claims are barred in whole or in part by reason of Defendant's compliance with all applicable laws, statutes, and regulations. Further, to the extent Plaintiffs' claims are based upon the purported violation of a statute or regulation that is of purely regulatory import or otherwise does not define "unlawful" conduct purposes of California Business & Professions Code section 17200 *et seq.*, Plaintiffs' claims are barred in whole or in part.

THIRTY-SECOND AFFIRMATIVE DEFENSE

(No Valid Basis for Injunctive Relief or Restitution)

To the extent Plaintiffs seek injunctive relief, restitution or an accounting, Plaintiffs cannot establish the necessary predicate(s) of entitlement to such relief.

THIRTY-THIRD AFFIRMATIVE DEFENSE

(No Likelihood of Public Deception)

Plaintiffs' claims are barred in whole or in part due to Plaintiffs' failure to meet their burden of showing that Defendant's alleged acts, conduct, or statements were likely to mislead the public.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

(Unconstitutional Imposition of Restitution/Disgorgement)

Plaintiffs' demands for restitution, disgorgement, or other monetary relief constitute or are the equivalent of a form of criminal or *quasi*-criminal sanction and thus violate Defendant's rights under the United States Constitution, including without limitation, the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments, and the California Constitution, absent the safe guards guaranteed by those provisions.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

(Adequate Remedy at Law)

To the extent that members of the general public that Plaintiffs purport to represent have sustained any injury or damage, which is not conceded, any such injury or damage could be adequately compensated in an action at law. Accordingly, Plaintiffs are not entitled to seek or obtain equitable relief.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

(Representative Claim Improper)

The claims of Plaintiffs violate Defendant's due process rights under the United States and California Constitutions to the extent that relief is sought on behalf of absent third persons.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

(Representative Claims Improper)

The claims of Plaintiffs violate Defendant's due process rights under the United States and California Constitutions to the extent that relief is sought on behalf of third persons even though this lawsuit cannot be maintained as a proper class action.

///

THIRTY-EIGHTH AFFIRMATIVE DEFENSE

(Reservation of Rights)

Defendant currently has insufficient information upon which to form a belief as to whether it may have additional, as yet unstated, affirmative defenses available. Defendant therefore reserves the right to assert additional affirmative defenses in the event that discovery indicates that they would be appropriate.

WHEREFORE, Defendant prays for judgment as follows:

1. That Plaintiffs take nothing by virtue of this action;
2. That any liability attributed to Defendant be limited in direct proportion to that percentage of fault actually attributable to Defendant;
3. For costs of suit incurred herein, including attorneys' fees;
4. For an order of this Court denying all relief sought by Plaintiffs herein; and
5. For such other and further relief as this Court may deem just and proper.

DATED: July 30, 2008

LUCE, FORWARD, HAMILTON & SCRIPPS LLP

By: ______________________
Kathryn A. Bernert
Nykia J. Wilson
Attorneys for Defendant HSBC AUTO FINANCE INC.

101106923.1

Kathryn A. Bernert, State Bar No. 127418
Nykia J. Wilson, State Bar No. 224135
LUCE, FORWARD, HAMILTON & SCRIPPS LLP
Del Mar Gateway, 11988 El Camino Real, Suite 200
San Diego, California 92130-2594
Telephone No.: 858.720.6300
Fax No.: 858.720.6306
E-Mail: kbernert@luce.com

Attorneys for Defendant HSBC AUTO FINANCE INC.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ANDREW WILLIAMS, RODERICK MURRIEL, ALFRED LARRAGA, CHAD ALEXANDER and CYNTHIA JIMENEZ, Plaintiffs, v. HSBC - AUTO FINANCE and DOES 1-20, Inclusive, Defendant.	Case No. 3:08-cv-01391-BEN-RBB **PROOF OF SERVICE**

I declare as follows:

I am an attorney with the firm of Luce, Forward, Hamilton & Scripps LLP, whose address is 600 West Broadway, Suite 2600, San Diego, California 92101-3372. I am a member of the bar of this court, over the age of eighteen years and not a party to this action.

On September 4, 2008, I caused to be served the following document(s):

1. **NOTICE OF ERRATA TO NOTICE OF REMOVAL OF CIVIL ACTION**

on the interested parties in this action by:

///

///

///

Electronic Mail Notice List

The following are those who are currently on this list to receive e-mail notices for this case.

Roy L. Landers, Esq.
LAW OFFICES OF ROY L. LANDERS
7840 Mission Center Court, Suite 101
San Diego, CA 92108
Phone: (619) 296-7898
Fax: (619) 296-5611
Email: mail@landerslaw.com

Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing).

(No manual notice recipients).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed at San Diego, California on September 4, 2008.

By: s/ Nykia J. Wilson
Attorneys for Defendants HSBC AUTO FINANCE INC. and HSBC FINANCE CORPORATION

101116369.1